

Permanent Peoples' Tribunal Session on Colombia

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ACCUSATION AGAINST THE TRANSNATIONAL DYNCORP

Prepared by the José Alvear Restrepo Lawyers' Collective, *Corporación Colectivo de Abogados "José Alvear Restrepo"*.

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1. GENERAL INFORMATION ON THE ENTERPRISE

DynCorp is a private security company created in 1946 *“by a group of US pilots, under the name of California Eastern Airways Inc. as an air freight business. It has used its present name since 1987.”* [1]

The following principal facts concerning this enterprise are available on the Internet:

DynCorp International Inc [2]



Type	Public (NYSE, DCP)
Founded	1946
Headquarters	Falls Church, Virginia, United States Robert B. McKeon, Chairman Herbert J. (Herb) Lanese, President, CEO and Director
Key people	Jay K. Gorman, EVP and COO Robert B. Rosenkranz, President, International Technical Services Natale S. DiGesualdo, President, Field Technical Services
Industry	Private military contractor, aircraft maintenance

Products	Drug eradication, law enforcement training, logistics, security services; maintenance for aircraft, support equipment, and weapons systems.
Revenue	\$1,967.0 Million USD (2006)
Net income	\$7.2 Million USD (2006)
Employees	14,400 (2006)
Slogan	<i>We are innovation in action</i>
Website	www.dyn-intl.com

According to information available on the Internet, “*DynCorp was acquired in 2003 by the California-based Computer Sciences Corporation, specialized in information technologies and very well positioned before the Pentagon.*” [3]

In 2005, DynCorp International was reportedly bought by Veritas Capital Fund LP, whose president is Robert B. McKeon, residing at 590 Madison Avenue, 41st Floor, New York City, New York, 10021 (telephone: (212) 688-0020). [4] It has also been asserted that this enterprise has “*its headquarters in Reston, Virginia, and its operational base in Cocoa Beach, Florida.*” [5]

Several subsidiaries of this enterprise are listed on the Internet, including: DynCorp International Inc., DynCorp International LLC, DynCorp Aerospace Operations LLC, DynCorp International of Nigeria LLC, and DynCorp International Services LLC, all of which are registered in the United States. [6] In any case, a common element to be highlighted from the available information is that one of the board members is former CIA director James Woolsey.

According to information from this enterprise’s webpage, “*DynCorp International is a multifaceted professional-services and project-management company*” operating principally as a “*provider of critical military and civilian support to governments*” and as an “*important commercial business in aviation, infrastructure development, security, and logistics, including international projects to build and manage regional air facilities [...] of the U.S. Armed Forces throughout the world, for foreign governments flying American aircraft, and for commercial aviation.*” [7]

As a part of its corporate development, this enterprise broadened its activities to include project security management. “*To date, we have recruited, trained, and deployed more*

than 5,000 highly-qualified civilian peacekeepers and police trainers to 11 countries, including Haiti, Bosnia, Afghanistan, and Iraq, for the Department of State. We provide major support to protect American diplomats and diplomatic facilities as well as key allied leaders in high-threat countries. We provide services to eradicate illicit narcotics crops and support drug-interdiction efforts in South America and Afghanistan. We are engaged in the removal and destruction of landmines and light weapons in Afghanistan. We have vast international experience and operate on all continents except Antarctica. Our business office in Dubai serves the Middle East region, where we have operated for some 30 years.” [8]

DynCorp’s corporate evolution may be summarized in five stages. First, in 1951 the enterprise limited its activity to aircraft maintenance. Second, in 1994 the US State Department proposed it train and deploy 120 civilian peacekeepers as a part of this country’s UN commitment to keep the peace in Haiti, which is an activity it continues to carry out and since then has *“recruited, trained, and deployed more than 5,000 highly skilled and experienced law-enforcement officers to perform civilian policing functions or train civilian police for the Department of State in Haiti, Albania, Bosnia, Slovenia, Kosovo, East Timor, Liberia, Macedonia, Serbia, the Palestinian territories, Afghanistan, and Iraq.” [9]*

Third, in 2000, the enterprise established *“a Web-based enterprise information system”* called DynInsight, *“that offers users open-book access to program data in near-real time.” [10]*

Fourth, in 2005, the enterprise initiated a number of services relating to advanced technology and highly skilled personnel in perimeter control and protection, among other elements, which combined to improve security industry services.

Lastly, in 2006 the enterprise began to employ aerial technology to control forest fires in the United States.

As can be seen, the activity of this enterprise is as varied as its size may allow, bearing in mind that it has almost 15,000 employees, operates on all continents, and boasts an annual revenue of nearly two billion dollars.

In Colombia, DynCorp is registered under the name DynCorp Aerospace Operation (UK) LTD., with a certificate of existence and legal registration in the Chamber of Commerce under the Tax ID No. (NIT) 830078749-4 and Registration No. 01050209, based in the United Kingdom with a branch office in the city of Bogotá at Avenida 82 No. 10-62, 5th Floor.

2. DYNCORP IN THE WORLD

When Veritas Capital Fund finalized the purchase of DynCorp, it issued a press release that described the activities of the enterprise as such:

“Currently DynCorp International provides services through two operating divisions: Field Training Services (FTS) and International Technical Services (ITS). FTS provides aviation services and engineering and logistical support, ranging from fleet maintenance to modifications and overhauls on weapons systems, aircraft and support equipment to the DoD. The Division Contract Field Teams (CFT) deploy personnel teams to customers to supplement a customer's workforce. FTS also provides domestic aviation services to owners and operators of large aircraft fleets, including Andrews Air Force Base, Fort Hood, and Fort Columbus in the U.S.” [11]

Along these lines, DynCorp continues to render the service mercenaries for security in Colombia as requested, being specialized in maintenance, piloting aircraft, and training military personnel.

DynCorp's revenue principally comes from contracting its services with US security agencies, including the State Department, the Defense Department, the DEA, the FBI, the Prison Department, and the US Army. [12] Other contracting agencies have included the Federal Aviation Administration, the Securities and Exchange Commission, and the

Centers for Disease Control. [13] *“It is responsible for the maintenance of 80% of NASA ships and 60% of the US army’s helicopter fleet.”* [14]

According to available information, DynCorp currently has contracts to advise the Iraqi and Haitian governments on training their police forces, judicial agencies, and prison institutions, is in charge of the private security of Afghan president Hamid Karzai, make up the core of the police force in Bosnia, and is in charge of the border posts between the US and Mexico. [15]

Its presence in countries receiving US military assistance (either in low intensity situations or in settings involving open US intervention) have produced important scandals, directly implicating the enterprise in the commission of crimes and human rights violations.

For instance, in the 1980’s the enterprise was implicated in the Iran-Contra scandal. In the 1990’s, the enterprise became a fundamental component for the US intervention of Haiti. Lastly, DynCorp members in Bosnia were involved in the sexual trafficking of minors, but due to their immunity no one was ever tried before any court in the world.

In order to further illustrate these references, the following episodes will be summarized.

2.1 Nicaragua (1980’s)

A company subcontracted by DynCorp was implicated in Nicaragua’s internal conflict:

“The enterprise Eagle Aviation Services and Technology, Inc. –EAST-, subcontracted by DynCorp, helped lieutenant colonel Oliver North, during the Iran-Contra scandal in the 1980’s, transport weapons and munitions for the Nicaraguan Contras in their fight against the Sandinista government.” [16]

More specifically, [17] *“In the 1980s, EAST and its founder, Richard Gadd, helped North, then a National Security Council official, secretly supply weapons and ammunition to Nicaragua’s Contra rebels at a time that Congress had banned the government from providing lethal aid.”*

North also arranged for another of Gadd's companies to win a State Department contract to deliver legal, humanitarian aid. That created what Iran-Contra Independent Counsel Lawrence Walsh called 'a rare occasion that a U.S. government program unwittingly provided cover to a private covert operation.'

Revelations of the Contra arms operation and that it had been partly funded by weapons sales to Iran led to convictions of top Reagan administration officials. Gadd testified in the Iran-Contra case under a grant of immunity from prosecution, and neither he nor EAST was accused of illegalities.

[...] In his Iran-Contra testimony, Gadd said EAST was one of several companies he formed after retiring in 1982 as a lieutenant colonel from the Air Force, where he specialized in covert operations.

In the 1980s, the Contra rebels were trying to topple Nicaragua's leftist Sandinista government. The Reagan administration backed the Contras, viewing the Sandinistas as a Marxist threat to Central America. Democrats who controlled Congress believed the United States should stay out of the conflict and barred U.S. officials from providing lethal aid.

North turned to retired Gen. Richard Secord to set up a private arms pipeline to the Contras. Secord hired Gadd in 1985 to oversee the weapons delivery. Through EAST, Gadd helped acquire planes to carry arms and ammunition from Portugal to Central America, and to make airdrops directly to Contra fighters. EAST also built an airstrip in Costa Rica near the Nicaraguan border. EAST received \$550,000 for its covert work, according to Walsh's final report." [18]

2.2 Bosnia (1993)

In the Balkans, DynCorp was in charge of training the police force in Bosnia. During that time, through the denunciations made by Ben Johnston, a DynCorp employee, it was discovered that several employees from this transnational were carrying out acts of

corruption, and, even more serious, engaging in sex trafficking of girls from Russia and Rumania.

"In 1999, DynCorp employees in Bosnia were accused of purchasing and trafficking in girls to be used as sex slaves. According to the lawsuit filed in Texas in reference to the man who had been an aircraft mechanic for DynCorp:

"In the latter part of 1999 Johnston learned that employees and supervisors from DynCorp were engaging in perverse, illegal and inhumane behavior [and] were purchasing illegal weapons, women, forged passports and [participating] in other immoral acts. Johnston witnessed coworkers and supervisors literally buying and selling women for their own personal enjoyment, and employees would brag about the various ages and talents of the individual slaves they had purchased."

According to investigative reporter Kelly Patricia O'Meara, rather than acknowledge and reward Johnston's effort to get this behavior stopped, DynCorp fired him, forcing him into protective custody by the U.S. Army Criminal Investigation Division (CID) until the investigators could get him safely out of Kosovo and returned to the United States.

[...] Johnston drew the line when it came to buying young girls and women as sex slaves.

"I heard talk about the prostitution right away, but it took some time before I understood that they were buying these girls. I'd tell them that it was wrong and that it was no different than slavery - that you can't buy women. But they'd buy the women's passports and they [then] owned them and would sell them to each other.

'None of the girls,' continues Johnston, 'were from Bosnia. They were from Russia, Romania and other places, and they were imported in by DynCorp and the Serbian mafia. These guys would say 'I gotta go to Serbia this weekend

to pick up three girls.' They talk about it and brag about how much they pay for them - usually between \$600 and \$800."

According to DynCorp employee Kevin Werner's sworn statement to CID:

'During my last six months I have come to know a man we call 'Debeli,' which is Bosnian for fat boy. He is the operator of a nightclub by the name of Harley's that offers prostitution. Women are sold hourly, nightly or permanently.' Werner admitted to having purchased a woman to get her out of prostitution and named other DynCorp employees who also had paid to own women.

According to the investigation report, under Paragraph 5 of the NATO Agreement between the Republic of Bosnia-Herzegovina and Croatia regarding the status of NATO and its personnel, contractors 'were not immune from local prosecution if the acts were committed outside the scope of their official duties.'

According to Kelly Patricia O'Meara it was incredible the CID case was closed in June 2000 and turned over to the Bosnian authorities. DynCorp says it conducted its own investigation, and Hirtz and Werner were fired by DynCorp and returned to the United States but were not prosecuted.

[...] Christine Dolan, founder of the International Humanitarian Campaign Against the Exploitation of Children, a Washington-based nonprofit organization, told Insight: "What is surprising to me is that DynCorp has kept this contract. The U.S. says it wants to eradicate trafficking of people, has established an office in the State Department for this purpose, and yet neither State nor the government-contracting authorities have stepped in and done an investigation of this matter." [19]

Lastly, other denunciations of abuses were reported; nonetheless they also remained unpunished. "Kathryn Bolkovac, a U.N. International Police Force monitor filed a lawsuit in Britain in 2001 against DynCorp for firing her after she reported that

DynCorp police trainers in Bosnia were paying for prostitutes and participating in sex trafficking. Many of the DynCorp employees were forced to resign under suspicion of illegal activity. But none were prosecuted, since they enjoy immunity from prosecution in Bosnia.” [20]

2.3 Haiti (1994)

The United States played a leading role in the events that occurred in Haiti in 1994, after the first coup against President Aristide. The transnational security enterprises, among them DynCorp, obtained their share of business training the future police force that would guarantee order in the country as determined by Washington. [21]

“Following three years of military rule, the US intervened in 1994, sending in 20,000 occupation troops and "peace-keepers" to Haiti. The US military intervention was not intended to restore democracy. Quite the contrary: it was carried out to prevent a popular insurrection against the Military Junta and its neoliberal cohorts. In other words, the US military occupation was implemented to ensure political continuity.

[...] US troops remained in the country until 1999. The Haitian armed forces were disbanded and the US State Department hired a mercenary company DynCorp to provide "technical advice" in restructuring the Haitian National Police (HNP).

DynCorp has always functioned as a cut-out for Pentagon and CIA covert operations.’ Under DynCorp advice in Haiti, former Tonton Macoute and Haitian military officers involved in the 1991 coup d’état were brought into the HNP.” [22]

This case demonstrates the mercenary characteristic of DynCorp, which carries out its “trainings” with total indifference to political, humanitarian and ethical considerations.

2.4 Iraq

Currently, the largest occupying force in Iraq is made up of mercenaries belonging to transitional security enterprises. [23] *“The principal US mercenary companies operating in Iraq are **Black Water Co., DynCorp, CACI International** (based in Virginia) and **Titan Inc.** (based in California). It has been demonstrated that mercenaries contracted by the latter two companies took part in the torture of Iraqi war prisoners at the Abu Ghraib prison, but their cases were closed since they were not subject to military justice.”* [24]

DynCorp has reportedly been awarded contracts worth US \$750 million dollars to train Iraqi police forces, as it had done in Bosnia and Haiti. Available information stresses that the Iraqi police, trained by private security enterprises like DynCorp, have become a key component in the current dirty war, rather than a foundation for democracy proclaimed by US authorities. In fact, US federal investigators are examining reports of criminal fraud by DynCorp employees, including the sale of ammunition earmarked for the Iraqi police. [25]

Recently, Stuart Bowen, the special US inspector general for Iraq reconstruction, indicated that the occupation of Iraq had cost US taxpayers more than 300 billion dollars and that several million dollars had disappeared due to fraudulent and corrupt practices. *“According to the report, the State Department paid 43.8 million dollars to contractor DynCorp International for the residential camp for police training personnel outside of Baghdad's Adnan Palace grounds, which has stood empty for months.”* [26]

Meanwhile, emphasis is drawn to the immunity of said contractors in the countries where they operate, such as Iraq. For instance, Brig. Gen. Karl Horst, deputy commander of the Third Infantry Division in charge of security in Baghdad, stated: *“These guys run loose in this country and do stupid stuff. There's no authority over them, so you can't come down on them hard when they escalate force [...]. They shoot people, and someone else has to deal with the aftermath. It happens all over the place.”* [27]

2.5 Afghanistan

In Afghanistan, DynCorp was hired to provide training for this country's army as well as for the private protection of president Hamid Karzai. In fact, most of the \$1.1 billion the United States has spent on training police in Afghanistan has gone to DynCorp. According to Gregory Lagana, a company spokesman, in the 2004, 2005 and 2006 fiscal years, DynCorp received a total of \$1.6 billion for its training and security work in Iraq and Afghanistan, which accounted for roughly 30 percent of the company's revenue during those years. The company deployed 337 police advisors in Afghanistan and almost half of all advisors deployed by the US in Iraq. Furthermore, Ali Jalali, Afghan Minister of Interior from 2002 to 2005, stated that the advisers sent to his ministry had unimpressive resumes and were not suited for the work. [28]

One episode in particular should be highlighted: *“Crispin Thorold [BBC journalist] reported seeing the Afghan transport minister receive a slap from one of Mr. Karzai's security guards on a visit to the northern city of Mazar-e-Sharif.”* [29]

In other words, their power and impunity reaches such a level that they may even assault senior government officials in the countries where they operate.

3. DYNACORP IN COLOMBIA

According to information available on the Internet, DynCorp *“presented itself [in Colombia] as a British company with offices in Aldershot, Hampshire. In its contracts with the U.S. State Department, it appears as a U.S. company based in Reston, Virginia, which has a base of operations in Cocoa Beach, Florida.”* [30]

According to information available at the Colombian Chamber of Commerce, DynCorp Aerospace Operation (UK) LTD. is based in the United Kingdom and has a branch office in the city of Bogotá. According to this registration, the enterprise has the following social purpose:

“[DynCorp] has a social purpose of providing support services for bilateral anti-narcotics programs between the US and Colombian governments. In order to achieve this, the branch acquires, possesses, taxes, and deeds all types of

moveable and real property; transfers, accepts, negotiates, discounts, etc., all types of negotiable instruments and other civil and commercial documents necessary or suitable for achieving its objectives; participates either as a shareholder or founder, in other companies; receives cash loans, with or without real or personal guarantees; and in general carries out all types of acts or contracts directly related with this company's principal social purpose in Colombia.” [31]

Although other transnational security enterprises operate in Colombia under mercenary operation arrangements, including ARINC, Grupo Rendon, ACS Defense, Lockheed-Martin, Northrop Grumman Corp., ManTech, TRW, Matcom, ALION, and California Microwave Systems, [32] without a doubt, DynCorp is the most representative and has operated in Colombia the longest. Furthermore, it has the largest service contracts with Plan Colombia and has been most implicated in the commission of crimes in this country as well as violations to human rights caused through its aerial spraying operations.

According to the Colombian Ministry of Defense:

“US military personnel and contractors in Colombia provide support for different programs that have been implemented by both governments in the fight against the illicit trafficking of drugs and terrorism.

The support offered by these personnel will be for training, providing equipment for tactical units, and the design of infrastructure projects to support anti-narcotics activities by the public force.

Furthermore, personnel from the public force will be offered training and instruction in human rights and international humanitarian law, as well as the strengthening of military criminal justice.

Likewise, personnel will also receive support to strengthen and improve their capabilities in public force logistics systems (SILOG), in maintenance and adaptation of aircraft designated for the fight against drug-trafficking, and in

improving medical units in theaters of operation through the Trauma and Rescue Aerial Group (GATRA).” [33]

On October 27, 2000, DynCorp was registered with the legal registration of Robert B. Allenger, Jr., residing in Texas as the president of this enterprise. On November 26, 2003, Margarita Quijano Guerra is registered as the legal representative. On November 2005, Keith Allen is appointed the principal liquidator of DynCorp Aerospace Operations UK LTD and Colombian citizens are granted the authority to finalize “*labor contracts for employees of this branch.*” On this date, the latest registration also appears with the names of Curtis Adams and Robert Knepper to pay taxes to different Colombian authorities.

It has been stated that DynCorp first entered in Colombia in 1993 [34] or 1994, as a part of the bi-national cooperation agreements signed with the United States.

These instruments date from the multilateral treaty: “*Inter-American Treaty for Reciprocal Assistance*”, adopted in Rio de Janeiro in 1947 as a part of the Inter-American Conference for the Maintenance of Continental Peace and Security, at which time it was considered “*that the obligation of mutual assistance and common defense of the American Republics is essentially related to their democratic ideals and to their will to cooperate permanently in the fulfillment of the principles and purposes of a policy of peace.*” [35]

Later, in 1952, a bilateral agreement was signed for “*Military Assistance between the Republic of Colombia and the United States of America.*” [36] In its Article 5, guarantees were agreed upon concerning the joint military missions:

“Each Government agrees to receive personnel of the other Government who will discharge responsibilities of the latter Government in connection with the implementation of this Agreement. Such personnel will be accorded facilities to observe the progress of assistance furnished pursuant to this Agreement. Such personnel who are nationals of that other country, including personnel temporarily assigned, will, in their relations with the Government of the country to which they are assigned, operate as a part of the Embassy under the direction

and control of the Chief of the Diplomatic Mission of the Government of the sending country, and shall be accorded all privileges and immunities conferred by international custom to Embassy personnel of corresponding rank [...].”

As a part of US policy against communism throughout the world, in 1962 the governments of Colombia and the United States of America signed the “*General Agreement for Economic, Technical and Related Assistance*”, where the previously mentioned clause is repeated.

“Article 3. The Government of Colombia will receive a special mission and its personnel to discharge the responsibilities of the Government of the United States of America hereunder and will consider this special mission and its personnel as part of the diplomatic mission of the Government of the United States of America in Colombia for the purpose of receiving the privileges and immunities accorded to that mission and its personnel of comparable rank.” [37]

“*Agreement between the Government of the United States of America and the Government of the Republic of Colombia concerning an Army Mission, a Naval Mission and an Air Force Mission of the United States of America Armed Forces in the Republic of Colombia*” was signed in 1974. It aimed to provide ongoing technical and consulting cooperation to the Colombian Army, Navy, and Air Force. Article 12 of said agreement agreed to the following:

“Article 12. Members of the Service Missions of the United States of America shall be governed by the disciplinary regulations of the Armed Forces of the United States of America.” [38]

This agreement makes it possible for US military missions in Colombia to be integrated not only by members of the US military forces, but also by “*non-accredited*” personnel. Specifically, it authorizes “*the presence in the country of such other supplementary personnel of the Armed Forces of the United States of America as may be strictly necessary to perform the duties concerned with the administration of the Service Missions; they shall be NON ACCREDITED personnel.*” [39]

In September 2000, and considering “*the Government of the United States of America agrees to furnish financial, material, economic, technical and related assistance to the Government of the Republic of Colombia designed to strengthen the capability of the Colombian government in support of the 1988 United Nations Convention Against Illegal Traffic in Narcotic Drugs and Psychotropic Substances, to which both Colombia and the United States are signatory parties, the Plan Colombia national strategy, and the Government of the Republic of Colombia's National Plan to Combat Drugs,*” [40] the Colombian and US governments signed the “*Annex to the General Agreement for Economic, Technical and Related Assistance.*”

In short, this agreement guarantees the implementation of Plan Colombia. In 1998, then president Andrés Pastrana, proposed as one of the focuses of his administration’s policy: *Plan Colombia - Chance to Build Peace*, which focused on issues of peace, drug-trafficking, and economic recovery.

These policies were carried out through the following focus areas: institutional strengthening, humanitarian assistance for internally displaced persons, and productive projects, among other initiatives, which were meant for the coca-growing population, the promotion of environmental sustainability and, lastly, the development of an “*infrastructure for peace*” (based on a dialogue process with the FARC guerrilla group).

Such an ambitious project could only be undertaken under the premise of the co-responsibility of the international community with Colombia, principally around the issue of drug trafficking. Furthermore, it would also have to be subsidized through Colombia’s own resources, meaning its national budget and domestic and foreign debt, as well as through resources provided by the international community according to the commitments acquired at the “*Donors’ Table.*”

Two years later, in 2000, Plan Colombia began to be implemented with international financial backing almost exclusively from the United States; however the original design had acquired new elements. For instance, institutional development would be measured by

the level of the strengthening of Colombian military and police forces and by the degree of progress in the fight against drug trafficking, principally targeting the *campesino* producer.

The passage of resources for Plan Colombia in the US Congress was heavily lobbied by enterprises that later benefited from this policy through the rendering of services, [41] *“including –besides the governments of the United States and Colombia- Bell Textron Helicopters (Texas), which supplies aircraft transporting troops and resources, and Sikorsky Helicopters, which supplies the Blackhawk helicopters used to protect the crop dusters, in addition to Monsanto (Kansas), which supplies Glyphosate (Round-Up Ultra), and DynCorp (Reston, Virginia), the enterprise with the most interests there. Of all these companies, the latter is the principal enterprise subcontracted by the State Department for Colombia, which enjoys a contract of approximately \$600 million dollars for fumigations, and the maintenance of crop dusters and helicopters used in the operations. Each one of these enterprises employs specialized companies for high-level lobby in Washington.”*

The “Annex to the General Agreement on Economic, Technical and Other Related Assistance” signed in 2000 guaranteed to protect the interests of these enterprises, establishing that *“[a]ll goods and services procured with funds of the Government of the United States of America will be procured under the procurement regulations and policies of the Government of the United States of America, and procured in and shipped from the United States [...]”* [42]

Successively, annexes and appendices to this annex were signed, in which immunity clauses were maintained for the members of the US mission participating in Plan Colombia. Moreover, the projects contained in said annexes specifically referred to the DynCorp programs and stated they would be undertaken *“through the US Military Group (SUMLGP), specifically the Air Force Mission (AFMIS), with assistance from the Narcotics Affairs Section (NAS) of the US Embassy (Operational Parties of the US Government), and by the Colombian Air Force (Operational Party of the Colombian Ministry of Defense)”* [43] and exclusively controlled by the *“Narcotics Affairs Section (NAS) of the US Embassy in Colombia.”* For instance, the following projects were included:

- Modernizing thirteen A-37 aircraft pertaining to the Colombian Air Force. [44]
- Maintaining the maintenance system of the A-37 aircraft pertaining to the Colombian Air Force, keeping at least 75% of the fleet at immediate operational availability.” [45]
- Strengthening and improving the capability of the air force in supplying air support to the public forces’ anti-narcotics operations. [46]
- Undertaking operations to interdict or intercept suspicious aircraft; improving the control of Colombian air space. [47]
- Modernizing the C-26 surveillance aircraft pertaining to the Colombian Air Force in order to strengthen and improve the Colombian Air Force’s capability to undertake operations involving aerial interdiction and intelligence gathering in support of the anti-narcotics operations of the Colombian public force.

By issuing reports on the principal results of the contracts signed by the Colombian public institutions with the most representative international cooperation bodies from 1998 to 2002, the Office of the Comptroller General (*Contraloría General de la Nación*) found that international cooperation in the area of security practically limits itself to what was agreed upon with the US government:

“[F]rom the perspective of cooperation, Colombia has undertaken conventions under the security aid program with the US government, whose bilateral assistance has been channeled through the Defense and State Departments. In that sense, the actions of international cooperation agencies or bodies are not measured since they are a part of a program undertaken directly by the US government through its own agencies.” [48]

The Office of the Comptroller General describes the methodology employed by the US Defense Department in the negotiation of defense services for Colombia as well as other countries:

“Assistance for security offered by the US Department of the Defense includes the Foreign Military Sales (FMS) program, through which foreign governments

acquire and negotiate articles and services for defense. The program consists in selling Defense Department stock or negotiating the purchase of goods or services for defense matters. The contracts established in this way are paid for with resources from the Colombian national budget, which are managed through holding accounts by the US Department of Defense.

All of the costs of the payments for these government acquisitions have to be associated with sales and, fundamentally, should have been signed as an agreement between governments, normally documented in a letter of offer and acceptance (LOA) between the government of the United States and the foreign government. Each LOA is commonly referred to as a special case and is exclusively assigned to be identified in accordance with the proposal of the accounts. Under this system, the military services and articles, including the trainings and instructions, should be provided with an existing or a new provider. For the convenience of the FMS purchaser, the Department of Defense maintains a savings account for the purchaser where the excess monies are deposited that result from the adjustments in the different cases. The holding account is a sub-account of unidentified money for a specific FMS case.

The FMS client may request the Department of Defense to withdraw from the holding account and make a transfer to a specific case in order to cover an immediate need. The objectives of these agreements have to do with acquiring goods and services previously agreed upon by the governments of Colombia and the United States of America; providing human resources capable of training staff in technical matters; providing help and support in order to obtain self-efficiency in operations and maintenance; and reducing the cost of certain equipment and materials.” [49]

Under this model, agreements are negotiated that benefit transnational security enterprises like DynCorp, when the programs are channeled through the US Department of Defense. As far as Plan Colombia, this enterprise and the US State Department are the principal agencies involved.

This arrangement means that no Colombian government agency may exercise any control or oversight of the bi-national programs undertaken by mercenary transnational security enterprises, which are legalized through these agreements. Colombian agencies do not even have information concerning the number of mercenaries in the country.

In April 2006, the Colombian Ministry of Defense responded to the José Alvear Restrepo Lawyers' Collective regarding how many contract workers had participated in the different programs of Plan Colombia in our country since 2000.

“This Ministry does not possess information as to the number of contract workers (national or foreign) that have supported the different programs implemented with the cooperation of the US government as a part of Plan Colombia since 2000. This information is exclusively handled by the US Embassy in Colombia.” [50]

With reason then, it has been asserted that DynCorp:

“[I]s a loose wheel not controlled by any State agency. Its relations are kept directly with the [Narcotics Affairs Section of the US Embassy], which channels the resources approved by the US Congress to combat drug trafficking in the country. It matters little that qualms were expressed by then [national] police chief General José Serrano Rosso, who did not agree that a private enterprise should come to the country, work hand in hand with the anti-narcotics police to fight against drug-trafficking, and not be under any oversight by the Colombian police or any other official agency. However the State Department conditioned the aid with the presence of DynCorp in Colombia and, to avoid any delay, assigned the Narcotics Affairs Section with being directly responsible for the work to be undertaken by DynCorp in Colombia.

[...] In effect, at the end of 1993, the first men from DynCorp were sent to Colombia. ‘They came with their own planes and pilots. And the police had to give them official licenses, which were painted on these planes’, stated a senior

police commander that had been in contact with DynCorp since it first came to Colombia.

Not even the Civil Aviation Administration (Aeronáutica Civil) has knowledge of the activities undertaken by DynCorp aircraft in Colombia. ‘No authority, be it Aviation, Customs, Police, or Army, is authorized to review DynCorp aircraft arriving to Colombia. The Narcotics Affairs Section is who decides which aircraft, leaving from the US air bases and entering the country, are subject to revision. No one knows what is transported in those planes when they return to the US because they are untouchable,’ added a source consulted by SEMANA Magazine.” [51]

According to available information, “*at the end of March 2001 there were a little more than 100 men from this enterprise in Colombia.*” [52] Be that as it may, at the beginning of Plan Colombia it was asserted that the limit for contract workers was 300. In 2002 this limit was increased by another 100, making it legal in Colombia to have the presence of more than 400 mercenaries within the framework of the Plan Colombia programs.

As far as its theater of operations, according to government sources, the enterprise operates at Fort Larandia and Fort Tolemaida and with the 18th Army Brigade (BCG-30, BCG-24), Army Urban Special Forces Group (AFEATUR), Mobile Brigades 1, 2, 3, 4, 6, 7, 8, 9, 10, and 12, the Navy’s Coast Guard, the Marine River Brigade, Navy Air Force Command, Air Combat Command No. 2 (CACOM-2), Air Combat Command No. 6 (CACOM-6), Military Air Transport Command (CATAM), where there is Land-based Air Force Radar, and the Air Force Center for Communications, Command and Control. [53]

The Center for International Policy has registered the following additional units receiving training from US cooperation in Colombia:

- **Army:**

Military Academy, Counterguerrilla Battalion 32, Special Forces Command Battalion, Helicopter Battalion at Tolemaida, Ayacucho Battalion, García Rovira Battalion, Raúl Reyes Battalion, Engineer Corp, Lanceros Battalion, Combat 1 Support Services Battalion,

Cacique Calarcá Services 8 Battalion, Neiva 9th Brigade, 12th Brigade at Florencia, 18th Arauca Brigade, Anti-narcotics Brigade (BACNA), Air Brigade, Special Forces Brigade, Mobile 3rd Brigade, Special Operations Command (COESE), Logistical Operations Command in Bogotá, Artillery School, War School, Special Forces School, Engineering School, Logistics School, Civilian-Military Relations School, Rapid Deployment Force (FUDRA), Joint Logistics Task Force in San José del Guaviare, Reveiz Pizarro Cavalry Force, Military Intelligence Central Office, Regional Intelligence 1 Office, and the Sixth Division.

- **Air Force:**

CACOM - 2 Apiay, CACOM 3 Barranquilla, CACOM 4 Melgar, CACOM 5 Ríonegro, CATAM Bogotá, Air Maintenance Command in Madrid (Cundinamarca), Air Transport Command in Bogotá, C-130 Squadron, Air School in Cali, ESUFA School in Madrid (Cundinamarca), GAORI Marandúa, GASUR Tres Esquinas, San Andrés Caribbean Air Group, SATENA, Air Education Section in Bogotá.

- **Navy:**

Naval Academy, Independent ARC, Tayrona Cartagena ARC, Navy Air Command in Bogotá, Submarine Command – Submarine Fleet, Caribbean Navy Air Group in Cartagena (GANCA), Navy Air Group on the Pacific at Bahía Málaga (GAMPA), Coast Guard (Cartagena), Coast Guard (Leticia), Scuba Diving Special Unit, Special Forces 1 Marine Battalion, Marine Battalion 2, Counterguerrilla 1 Corozal Marine Battalion, Rifles 8 Marine Battalion, Marine Battalion 9 (Tumaco), River Marine Battalion 10 (Guapi), River Marine Battalion 30, River Marine Battalion 40 (Puerto Carreño), River Marine Battalion 50 (Puerto Inárida), River Marine Battalion 60 (Puerto Leguízamo), River Marine Brigade, Marine Command (Bogotá), Marine Port Headquarters at Cartagena (DIMAR), Marine River Combat School (Puerto Leguízamo), Marine Urban Anti-Terrorism Special Forces Unit.

- **Police:**

Mounted Police, Police District 3 (Espinal, Tolima), Air Service, Anti-Narcotics Unit (DIRAN).

- **Others:**

DAS and the Ministry of Defense.

The “untouchability”, or legal/diplomatic immunity of the US Mission in Colombia accredited or unaccredited was recently ratified due to the impending International Criminal Court, and was extended to any other US citizen in the country.

Effectively, in December 2003 the government of the Republic of Colombia and the US government signed the *“Agreement regarding the surrender of persons of the United States of America to the International Criminal Court.”*

“[...] Noting that in conformity with the 1962 Agreement the persons covered thereunder, including current or former government officials, employees (including contractors) and military personnel, are not subject to Colombian jurisdiction, as a result of which their surrender, by any means, to the International Criminal Court, requires the express consent of the Government of the United States of America;

Noting that under international law, persons of the United States of America who enjoy immunity from Colombian criminal jurisdiction, including functional immunity, are not subject, within the terms of the immunity, to Colombian jurisdiction, as a result of which their surrender, by any means, to the International Criminal Court, requires the express consent of the Government of the United States of America;

[...] 2. A person of the United States of America, the Sending State, shall not, absent the express consent of the United States of America:

a) be surrendered or transferred by any means to the International Criminal Court for any purpose, or

b) be surrendered or transferred by any means to any entity or third country, or expelled to a third country, for the purpose of surrender to or transfer to the International Criminal Court.” [54]

In keeping with this agreement, no US citizen, including of course the employees of DynCorp, will be touched by the International Criminal Court.

4. ACTS IMPLICATING DYNCORP IN THE COMMISSION OF CRIMES IN COLOMBIA

The conventional immunity for the US mission in Colombia has allowed members of this enterprise to commit several crimes in Colombia, principally relating to drug trafficking. For instance, in May 2000, recently after Plan Colombia was implemented, several small bottles containing heroin were detected at the El Dorado airport in Bogotá in which “*the enterprise DynCorp appeared as the sender of a package with the final destination of the Patrick Air Base in Florida.*” [55]

Once the heroin was detected at the airport, the Colombian police officer conducting the initial investigation for these acts was immediately removed from his post (even though he held the rank of general) by order of the Narcotics Affairs Section of the US Embassy in Bogotá, [56] which demonstrates the immense power held by this office to intervene with Colombian government authorities.

When the Canadian Newspaper “*The Nation*” uncovered this scandal, Janet Wineriter, spokesperson for DynCorp, replied that said liquid did not contain heroin: “*They were simply oil samples that should be sent by DynCorp technicians on a periodic basis, and that the tests had been done with apparently faulty equipment that had produced an incorrect reading.*” [57]

With respect to this act, US Congressman Jan Schakowsky tried to introduce an amendment prohibiting the use of military contract workers, asserting “*reports that DynCorp employees have been implicated in drug trafficking, the very thing they are paid to help prevent, only strengthens my conviction that outsourcing is the wrong*

policy.” [58]

Also in 2000, Michael Demons, a paramedic belonging to a DynCorp team operating at the Tres Esquinas military base in Caquetá (southern Colombia) died from heart attack at a hospital in Florencia, capital of this department: *“tests conducted by medical examiners demonstrated that the cause of death of the US citizen had been an overdose of cocaine.”* [59] Although a preliminary investigation was begun, the case file mysteriously disappeared from the archives at the Office of the Attorney General.

In 2002, the 25-year-old DynCorp employee Alexander Wakefield Ross Cáceres, who operated at an anti-narcotics base in the department of Putumayo, died from hitting his head on the moving propeller of an OV-10 aerial spraying aircraft. The pilot’s mother, Elena Cáceres, assured that he was murdered: *“He did not have to go anywhere near the planes, since he worked as geographic computation technician and spent his time in front of machines quite distinct to that of aircraft. Additionally, reports say he died in the hospital at Mocoa, when in reality the blow caused his immediate death on the airstrip. [...] This was no accident, as claimed by **DynCorp**. He knew something related to drugs and the company’s pilots. People close to the company say that over the last two years other mysterious deaths of foreigners have also occurred.”* [60]

These acts, yet to be clarified, demonstrate the irregularities surrounding the actions of the contract workers in Colombia as well as their links to activities related to drug trafficking.

In October 2004, it was revealed that contract workers operating in Tolemaida distributed a video in which they could be observed sexually violating underage girls from the town of Melgar. This video was even sold on the main streets of Bogotá. [61] Nonetheless, the Lawyers’ Collective has not learned of any criminal investigation undertaken in relation to these acts involving minors. According to follow-up work carried out by the Lawyers’ Collective through interviewing persons from this community, it was discovered that one of the minors involved in the videos committed suicide some time after the publication of the videos.

In march 2005, five US military members, belonging to the Armed Forces Antinarcotics Training Center, were detained for transporting 16 kilos of cocaine in a US military aircraft from the base at Apiay (Meta) to Texas, as reported by the Bogotá-based newspaper El Tiempo in an editorial titled “*Narcosoldiers*.”

Later, according to the same newspaper, a Colombian former soldier, whose last name was Jiménez, was implicated in the investigation. Furthermore, it was stated he worked with an enterprise contracted by Plan Colombia and operated from the base at Larandia and with the navy in Tumaco (Nariño). It was also asserted, “*he could be fundamental piece to uncovering the connections of the detained US military members*”, since “*he was one of the first persons to connect the contract worker foreign enterprise with the drug dealers with the aim to conceal the alkaloid among military canisters*.” [62]

Although the implicated persons are US soldiers, relations with the mafia were carried out by a contract worker agency. (And DynCorp was the only contract worker agency operating in the place of the acts.)

In May 2005, the US citizens Alan Norman Tanquary and José Hernández, who confirmed they were members of the US Army’s Special Forces 7th Group as well as shooting-drill instructors at the Army’s National Training Center in Tolemaida (which also has strong presence of private contract workers), were arrested in the act of trafficking more than 30,000 projectiles to paramilitary groups in the area of Carmen de Apicalá, which is on the highway connecting the departments of Tolima and Cundinamarca.

No Colombian or US authority issued a pronouncement clarifying the episode, the persons most involved in the acts, or its operation status regarding Plan Colombia antinarcotics activities. In this respect, it is not even known if the US citizens really belonged to the US Army.

In any case, the Office of the Attorney General requested the Ministry of Foreign Relations to lift the immunity of these US citizens so as to be able to continue with the investigation. This was denied based on the immunity clauses of the previously cited agreements. A press release undertaken by the Office of the Attorney General narrates the episode:

“With respect to the situation of the arrested US military members, the Office of the Attorney General publicly states the following:

- In the operation carried out on Tuesday, May 3, 2005, at approximately eight in the morning and in the jurisdiction of the municipality of Carmen de Apical (Tolima), the US citizens Jesús Hernández and Allan Norman Tanquary were arrested along with four persons of Colombian nationality for being the presumed authors of the crime of trafficking military-grade munitions.

- The investigation was assigned to a specialized prosecutor from the Fifth District Court in Ibagué (Tolima), who requested the Ministry of Foreign Relations to conduct the necessary diplomatic procedures with US authorities in order to obtain the lifting of criminal immunity enjoyed by Mr. Jesús Hernández and Mr. Allan Norman Tanquary.

- In keeping with the certification issued by the Protocol Division of the Ministry of Foreign Relations, since February 24, 2005, and for the duration of twelve (12) months, the US citizens are accredited as members of the US Military Mission in Colombia.

- In accordance with Articles 29 to 36 of the Vienna Convention of 1961 on diplomatic relations, incorporated as national legislation through Law 6 of 1972, the foreign technicians and administrative workers of the diplomatic mission enjoyed the privilege of immunity from criminal jurisdiction by the receiving State, and may not be the subject of any form of detention or arrest.

Due to the previously stated, the Deputy Attorney General (Vicefiscal General de la Nación), in compliance with international agreements and treaties and his commitments with the Colombian State, with respect to the previously described events in the referred-to situation, requested the prosecutor for the case to place the referred-to US citizens under the custody of authorities from the US Embassy [in Bogotá], which was done during the early hours of today.” [63]

The Procurator General (*Procurador General de la Nación*) immediately issued a public letter addressed to the president of Colombia, in which he warned of the urgent need for the instruments, making possible the application of Plan Colombia, and thus the presence of foreign military contract workers (i.e. mercenaries), to go through the corresponding constitutional procedures in force:

“May 20, 2005

Bogotá, Colombia

DP-0462

Doctor

ÁLVARO URIBE VÉLEZ

President of the Republic of Colombia

Esteemed Mr. President:

In my condition as Procurator General and in the exercise of my functions, and especially those that order me to supervise compliance with the constitution and supervise at the highest level the official conduct of those who hold public office (Article 277, numerals 1 and 6 of the Constitution), in relation to the agreement between the Colombian Government and the Government of the United States of America for US military missions in Colombian territory, it is my duty to request that you, as the supreme administrative authority for international relations (Article 189, numeral 2 of the Constitution), immediately submit this agreement to be approved by the National Congress, which shall decide to approve or reject the agreement, whenever the previously mentioned agreement produces effects in Colombian territory without having gone through the procedures as required by the 1886 Constitution, through which this agreement was signed into force, as well as the procedures for all international instruments established by the 1991 Constitution.

Because of this matter and due to the implications of the previously mentioned agreement for the Colombian State, this agreement does not fall under the exception created by Law 24 of 1959, which allows contracts and agreements to be signed with the specific purpose of ensuring the utilization or rendering of technical assistance or the supply of elements or other facilities required for the formulation or implementation of development plans or programs concerning economic, social, cultural, health or other related matters. According to Article 2 of the previously mentioned law, in order for these plans or programs to be valid, they only require the approval of the President of Colombia, provided a favorable opinion by the Council of Ministers. Otherwise, this law is contrary to the 1991 constitution, specifically Articles 150 (numeral 16) and 241 (numeral 10).

It must be specified that the previously mentioned agreement is also neither covered in the Vienna Convention, which regulates diplomatic relations, nor in the Vienna Convention, which regulates consular relations. These instruments have been in legal force in Colombia since 1972.

Lastly, bearing in mind that the agreement disregards norms essential to our national laws, this agreement cannot continue to be in effect and be defective, as indicated in the Vienna Treaty on Treaties (Article 46), passed by the National Congress through Law 32 of 1985. In these terms, the application of the agreement entails ignoring the Constitution, which may result in constitutional and disciplinary liabilities.

Sincerely,

Edgardo José Maya Villazón

Procurator General of the Nation [64]

As best is known, this public letter never received an official reply, conserving the tradition of silence employed by the Colombian government with regard to this issue, justifying said conduct under the argument of “*national security*.”

5. RESPONSIBILITY OF DYNACORP IN HUMAN RIGHTS VIOLATIONS

The purpose of the Permanent Peoples' Tribunal session on Colombia is to analyze and try the policies of Transnational Enterprises benefiting from crimes against humanity through the accumulation of capital, the control of whole territories and their economies, and the plundering of natural resources, reducing the population's stability and destroying the natural environment and biodiversity.

DynCorp is a transnational enterprise, which has profited throughout the world in settings of war, internal armed conflict, and political instability with armed expressions. Specifically, it profits from encouraging conflicts and making them functional to the rendering of the company's services.

Moreover, conflicts result in the deterioration of the affected population's living conditions, the loss of thousands of lives (along with the delicate social fabric they belong to), the destruction of human and natural resources, the loss of ecological and cultural human values, grave humanitarian and dreadful food crisis, the loss of the population's assets, violations against human dignity, as well as destruction and much pain.

As a result, we accuse DynCorp of the following human rights violations against Colombian and Ecuadorean communities, which are adversely affected by the impact of this company's activities (all of which concern grave offenses against humanity):

5.1 DUE TO ITS MERCENARY ACTIVITY:

Presently, the characteristics of mercenaryism and the very definition of *mercenary* is being discussed, since the classical definition established by international humanitarian law does not allow classifying as such the thousands of members of transnational security enterprises operating with these same methods and resources.

Nonetheless, Enrique Bernales Ballesteros, UN special rapporteur on the question of the use of mercenaries, understood the evolution of the ways and mechanisms adopted by these enterprises and resolved the discussion in a timely fashion:

“In recent conflicts unfolding in Africa, Asia and Latin America, there has been recourse to the recruiting and hiring of mercenaries, owing to their military experience and combat efficiency. In many cases, such persons could not be qualified as mercenaries if the requirements established by article 47 of Additional Protocol I (1977) to the 1949 Geneva Conventions were applied cumulatively and concomitantly. The Special Rapporteur nonetheless considers them mercenaries, despite the fact that the existing legal definitions are vitiated by gaps and juridical shortcomings and fail to take into account situations and activities that are mercenary in nature. [...]”

It is the Special Rapporteur's belief — and this view is generally shared by the first meeting of experts — that one of the new forms of mercenary activity is that which takes place through private security companies that hire out military services, using mercenaries for that purpose. The fact that international legal texts do not refer to this modality has facilitated its rapid expansion.” [65]

In keeping with this statement as well as the specific description previously given of DynCorp's activities around the world and in Colombia, we want to stress this transnational security enterprise is really a transnational mercenary agency. As such, DynCorp is responsible for the crime entailing this condition in and of itself. In this respect, we shall employ the reasoning used by the Special Rapporteur:

5.1.1 Mercenaryism as a premeditated crime:

“In general, mercenary activity is not spontaneous. It usually occurs as a result of conspiracy to commit crimes. It is also commonly associated with other unlawful activities such as traffic in persons, drugs and arms.” [66]

This circumstance coincides with the Colombian classification of “conspiracy to commit a crime”, which presumes “several persons conspire with the purpose of committing crimes.” (Article 340 of the Colombian Constitution) Furthermore, this crime is aggravated

if it occurs in order to commit the crimes of forced displacement, homicide, terrorism, and the trafficking of drugs, narcotics or psychotropic substances, as well as other crimes.

Paul Lombardi, director of DynCorp insists this enterprise does not influence policy; rather it only satisfies its clients. *“The State Department says: These are the missions we want you to fly. It says where, when, and how –it isn't our call. [...] We don't make a decision as to whether it's a good thing. Colin Powell and the president say it's what they want. The president of Colombia says it's what he wants. The question is, who's going to do it?”* [67]

However, this lack of concern regarding the effect of the policies designed by those contracting them (and which they implement), and what may result in grave crimes and human rights violations, does not exempt these enterprises from their responsibility. Considering the goals behind these criminal confederations, the use of term “*conspiracy to commit a crime*” makes sense.

Enterprises like DynCorp are established to create a profit through implementing sinister activities involving the satisfaction of the human rights of whole communities. Any violation to rights occurring as a consequence of its activity may not be considered a “*margin of error*” or “*wrongful*” conduct. To the contrary, the condition of mercenary constitutes an aggravating element when evaluating a specific conduct.

5.1.2 Mercenaryism is a crime committed by for-profit subjects:

“[T]he new methods employed by mercenaries escape the few prohibitions that domestic legislation and international law place on mercenary activities. Nevertheless these activities cause serious harm to the persons and peoples suffering their effects; the evils they produce not only constitute human rights violations, those responsible are professionals, specifically hired for their effectiveness in causing harm.” [68]

DynCorp members are highly skilled personnel meant to fulfill their work in Colombia as contracted by the US Department of State, which has been well summarized by Rand Beers

“(1) eradication of illicit drug crops, (2) training the army and staff from the country, (3) interdiction of laboratories processing the drug and transport narcotics.” [69]

DynCorp members are chosen for their skill in the area of operations and their salary corresponds to their experience in different combat settings. *“A person's character or the fact that he has been a soldier or is a former combatant, as well as experience in the use of sophisticated weapons, are what characterize the mercenary, especially those hired to participate in combat activities and train persons who are to join battalions, columns or units.” [70]*

Former members of police or military forces, working for agencies like DynCorp, do not only strip themselves of their uniform, but also of their oaths and honor, which they had assumed to guarantee the security of their respective Nation-States and to safeguard the interests of their community. Once they entered into the logic of being mercenaries, these subjects divested themselves of any responsibility or social loyalty and became the potential victimizers of any community in the world.

This ethical divestment is compensated by motives of profit. *“An Internet advertisement by the enterprise DynCorp International, chosen by the US Department of State to train Iraqi police officers, offers posts to security consultants with an annual salary of 153,600 dollars. The candidates should have five years of experience.” [71]*

This is when profit becomes the driving force behind the mercenary industry (e.g. the industry for war and conflict). In terms of Colombia, *“[e]ach pilot earns between 7,000 to 10,000 dollars a month and is considered an independent contract worker. DynCorp has also brought Colombian pilots into its ranks, who earn 6,000 dollars a month.” [72]*

According to Colombian criminal law, this conduct constitutes the aggravating factor in the crime of homicide (Article 104.4 of the Colombian Constitution), since the sentence is aggravated if the homicide is committed *“for a price, promise of remuneration, profit, or other heinous or trivial reasons.”*

In conclusion, the perversity of the mercenary practice lies in it causing harm for money or training others to cause harm for money.

5.1.3 Mercenaryism as a mechanism for human rights violations guaranteeing States disregard their international obligations relating to human rights.

The Special Rapporteur was able to demonstrate the close relationship between mercenary activity and human rights violation. *“Whether acting individually, or in the employ of contemporary multi-purpose security companies, the mercenary is generally present as a violator of human rights. On occasion he acts as a professional agent in terrorist operations; he takes part in illicit trafficking; he commits acts of sabotage, among others. The mercenary is an element in all kinds of covert operation. In comparison with the cost of mobilizing armed forces, the mercenary offers an inexpensive means of conducting operations, and is available to governments, transnational corporations, organizations, sects and groups, simply for payment. The mercenary is hired because he has no scruples in riding roughshod over the norms of international humanitarian law or even in committing serious crimes and human rights violations.”* [73]

Protected through legal instruments guaranteeing immunity in the countries where they operate, in addition to enjoying little publicity concerning their activities (due to “*national security*” clauses) and being removed from any type of connection with the national authorities from these countries, these private enterprises also become a mechanism that dismisses the State’s responsibility in terms of its own citizens’ human rights.

When the Special rapporteur proposed a new definition of mercenary, he explicitly asserted the relationship between these enterprises and governments did not legitimize mercenary activity per se: *“The fact that it may be a government which hires mercenaries, or hires companies which in turn recruit mercenaries, for its own defence and political purposes within its country or to bolster positions in armed conflicts, does not change the nature of the act or its illegitimacy. The principle that should be adopted in elaborating the new legal definition of mercenary is that the State is not authorized to recruit and employ mercenaries. International law and the constitutional law of each State assign*

the tasks of security, public order and defence to the regular military and police forces, by virtue of the concept of sovereignty.”

In other words, the apparent legality governments grant these enterprises through legal instruments meant for diplomatic missions is defective due to the very nature of mercenary activity. States are responsible for any violation committed by their agents, in addition to being under the obligation of guaranteeing the effectiveness of the rights of their victims insofar as truth, justice, and comprehensive reparation.

In this respect, even though the presence of DynCorp is legalized through binational legal instruments (in addition to being accepted by authorities from the Colombian government and protected by the Narcotics Affairs Section of the US Embassy in Colombia), this enterprise should still be examined criminally. Moreover, these legal instruments do not disconnect the Colombian State from its obligation to protect human rights, which also entails its duty to prevent violations (as established in the jurisprudence of the Inter-American system).

“This duty to prevent includes all those means of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any violations are considered and treated as illegal acts, which, as such, may lead to the punishment of those responsible and the obligation to indemnify the victims for damages caused.” [74]

5.1.4 Mercenaryism is a fundamental piece to consolidating a power opposed to the respect for human rights and the right to free self-determination of peoples.

The presence of the mercenary industry coincides with settings of war, political instability, or internal conflict with armed expressions. In these settings, almost as a general rule, different industries covet strategic natural resources. Alternatively, the peoples and communities also maintain a special relationship with the earth (either as indigenous peoples, Afro-descendants, or *raizales*, or as *campesino* communities organized in the defense of this territory).

Traditionally, State-sponsored terrorism appropriates these territories –or makes them attractive to foreign investment- through militarization, paramilitarization, as well as the mercenarization of the operations of control.

Mercenaryism becomes functional to the interests of certain sectors, industries, or countries. In other words, the mercenarization of military relations is not the objective; rather it is a means to reaching other objectives, protecting certain interests, and favoring certain beneficiaries.

“In the analysis of mercenary activities, responsibility does not end with the commission of the criminal act or with the identification and isolation of the agent. The mercenary has been determined to be merely the last link in a chain, in which his recruitment and his subsequent commission of the criminal act are but the execution of an act which has been conceived, planned, organized, financed and supervised by others, whether they are private groups, political opposition organizations, groups which advocate national, ethnic or religious intolerance, clandestine organizations, or Governments which, through covert operations, decide on illegal action against a State or against the life, liberty, physical integrity and safety of persons, and involve mercenaries in that action. Accordingly, responsibility extends to all those who take part in the criminal act, which, in its final phase, is executed by the mercenary agent.” [75]

DynCorp is the spearhead for the conservation of US interests in the Andean region, as claimed by its defense in a lawsuit currently being carried out against it in the United States for the affectations caused by fumigations to the Ecuadorean communities along the border:

“1 [T]he aerial drug eradication operations are a key element of United States counter-narcotics policy in Colombia and the Andean region. This policy is the product of a complicated balance of U.S. national security and foreign policy objectives, has been approved at the highest levels of government, has received

the direct attention of the President, the Secretary of State, and the National Security Council, among others, and has been endorsed by Congress.

2. Any disruption through this litigation of the aerial eradication of illicit drug crops in Colombia will undermine national security by depriving the United States of a key weapon in its arsenal for stemming the flow of illicit narcotics into this country and by allowing international terrorist organizations in Colombia to continue reaping huge profits from drug trafficking with which they will target US interests and American lives.” [76]

United States has disposed the presence of DynCorp in Colombia in order to protect strategic interests. Moreover, it has been justified through the argument of this country's national security and the transnational fight against terrorism. Reserve and immunity have been the methodologies employed. (And in this way the principles of the sovereignty and self-determination of the Colombian State have been violated.)

When the Colombian government accepted these conditions, it undermined national integrity, which is a conduct classified in the Colombia's Criminal Code (Article 455 of the Colombian Constitution), consisting in carrying out “*acts tending to undermine the territorial integrity of Colombia, subjecting the country –either entirely or partially- under foreign domination, affecting its nature as a Sovereign State, or fracturing national unity.*”

Since the legal asset being protected in this case is sovereignty, it should be remembered that –even though this concept is still being developed- it comes out of the need to maintain a balanced and just international order, where national interests are respected and, at any rate, the duty to protect the rights of citizens is attended. In this sense, the Colombian Constitutional Court has pronounced the following:

“The preamble of the national constitution expresses a principle of internationalization of life in the country. The starting point for this is the special preference for the integration of the Latin American community. Additionally, national sovereignty, respect for the self-determination of peoples,

and recognition of the principles of international law adopted by Colombia, come together as fundamental elements for its foreign relations in the world order (Article 9 of the Colombian Constitution).

Given the needs, requirements, and opportunities presented by the host of nations, the State should assume an active position as regards the internationalization of political, economic, social, and ecological relations based on fairness, reciprocity, and national interests.

Understanding that Colombia as a Nation is a subject with rights within the whole of nations in the world and that it has certain needs that may only be resolved with the aid of other States or institutions concerned with international law, Colombia should encourage these international relations individually and collectively, without losing sight of the fact that the signing of treaties or conventions should duly protect its rights as a Nation, as well as the rights of its inhabitants. In this regard, contractual clauses should exist to establish a sense of justice linked to the construction of a progressive international balance, with a relation between cost and benefit providing favorable results for national interests and the growing qualification of the national presence within the diverse spheres of action comprising the international ambit (Article 226 of the Colombian Constitution).” [77]

Nonetheless, no Colombian authority has yet to make a pronouncement against the presence of mercenaries in Colombia. To the contrary, it has been justified by claiming: “US military presence in national territory does not signify it has a bellicose nature, since there are also acts of international fraternity and courtesy, whose acceptance or not depends on the signing of bilateral agreements.” [78] However, judicial and legislative branches in Colombia have never examined these agreements, as ordered by constitutional procedures in force.

5.2 DUE TO ITS RESPONSABILITY IN THE AFFECTATION OF COMMUNITIES EXPOSED TO CHEMICAL AERIAL SPRAYING

“During the administration of President Jimmy Carter (1976-1980), interdiction and eradication were two key pieces of international US anti-narcotics policy. Stopping the contraband of drugs had the dimension of a border problem. The goal was to keep it from entering US territory and commit producing countries –as well as those used as transit points- to the task of improving the systems of control and repression of the narcotics exportation. Since the 1970’s, efforts to manually eradicate marijuana plantations were not seen in Washington as sufficient and positive. The White House and Congress began to coincide in the need to use herbicides to destroy both marijuana crops (especially in Colombia) and opium crops (especially in Turkey).” [79]

Since the 1970’s, the United States has been pressuring Colombia on the aerial chemical control of crops used for illicit purposes. Colombia has not been able to resist said pressure. In this respect, Colombia began to fumigate marijuana crops in 1978 and currently is the only country in the world employing the chemical control of coca and poppy plantations.

The arguments for implementing said policy principally refer to the effectiveness of the method (by manipulating the figures on the reduction of cultivated hectares), the economy of the method (since supporting substitution economies seem too costly to be taken on by the States in question), the safety of the method (by denying the impact it may have on health and the environment), and the political need of the method (since the fumigations are presented as the best device for affecting the source of income of the three groups classified as terrorist by the US State Department: FARC, ELN, and AUC –i.e. paramilitary groups).

Aerial spraying requires an infrastructure Colombia did not have at the end of the 1990’s. Consequently, the need arose for Plan Colombia (and with it the formulation of the military component designed by the United States).

The aerial fumigations do not only require aircraft, pilots, and chemicals; rather they also require helicopters armed with artillery, platforms for this type of aircraft, information and radar systems to guide these operations, an efficient maintenance system for all this

equipment, and a staff skilled not only in the piloting of the aircraft, but also in armed response to possible attacks from land.

The members of DynCorp have these skills and employ them to carry out combat maneuvers, which, for political reasons, cannot be carried out by members of the US military mission. Thus, the “dirty work” is given to the contract worker:

“In keeping with the contract signed between DynCorp and the Department of State, 12 of the pilots from the aerial fumigation program, who fly OV-10 planes, are US civilian contract workers from DynCorp. The pilots of the other aerial spraying planes (T-65 single engine planes) are escorted by helicopters, which carry a crew made up of members of DynCorp and personnel from the national police, as well as search and rescue helicopters, which also carry a mixed crew [...].

According to the contract, during a typical mission, the DynCorp contract workers travel in the helicopters accompanying the fumigation operations as pilots and medics, not gunners. These contract workers provide support for the anti-narcotics operations and do not fulfill any counterinsurgent role. Nonetheless, as opposed to the 200 US military advisors in Colombia, according to the contract, the men from DynCorp do not have orders to avoid combat.

This has been demonstrated on several occasions. Last February 21, FARC guerrilla members shot down a helicopter belonging to the Colombian police during a fumigation mission in Caquetá. In order to rescue the pilot from the police, Giancarlo Cotrino, and the members of his crew, DynCorp ordered its combat-trained personnel to go to their aid. Thus a special search force –known as SAR- was created to evacuate the crew, which flew by helicopter and landed in a coca field. The members of the rescue crew were armed with M-16 and remained on land for enough time to be able to dismount the machine guns and radios from the Huey II helicopter in order to keep them from falling into the hands of the guerrilla.

It is estimated that the SAR teams, a kind of private Delta Force, have participated in 15 rescue missions over the last six years in the country. They are combat experts. Most of them are war pilots. They participated in Vietnam, the Persian Gulf, El Salvador, and Guatemala,' stated an anti-narcotics officer."
[80]

The Colombian government allows and favors subjects (not under its military, criminal and administrative jurisdictions) to participate in armed confrontations with drug trafficking delinquents as well as with members of the insurgent opposition groups.

Special Rapporteur Bernales Ballesteros concluded the following: *"The mercenary has become a functional element in the crime, hired by unscrupulous agents who make the crime or offence a means of attaining their objectives and combating those who oppose them."* [81] DynCorp participates in this fashion and protects its actions through the diplomatic immunity derived from the binational agreements examined previously.

However, direct intervention by DynCorp in the internal armed political and social conflict occurs as a result of its principal activity, which is the aerial spraying of vast parts of the national territory.

According to official figures, [82] from 1999 to 2006, which corresponds to the period of application of Plan Colombia, 910,049 hectares were chemically sprayed in Colombia. In other words, almost one million hectares were fumigated.

According to official information, [83] 11 departments were fumigated in 2000; 9 departments in 2001; 8 departments in 2002; 12 departments in 2003; 16 departments in 2004; and 20 departments in 2005 (out of 36 departments in all of Colombia). The municipalities fumigated in each year include the following:

In 2000, the following municipalities were fumigated in the department of Cauca: El Tambo, Argelia, Balboa, Piamonte, Tumaco, Roberto Payán, San José, Barbacoas, and Leyva; in the department of Antioquia, the municipalities of Tarazá and Puerto Valdivia; in the department of Caquetá, Albania, Cartagena del Chairá, Curillo, Tres Esquinas, Las

Brisas, Milán, Montañita, Paujil, Puerto Rico, Solano, Solita, and Valparaíso; in the department of Norte de Santander, the municipality of Tibú; in the department of Cundinamarca, the municipalities of Sucre, Florian, Yacopí, and Otanche; in the department of Meta, Puerto Rico, Puerto Elvira, and Mapiripán; in the department of Guaviare, the municipalities of San José, Retorno, Calamar, and Miraflores; and lastly in the department of Putumayo, the municipalities of Puerto Leguísimo, Puerto Guzmán, Puerto Asís, Villa Garzón, Puerto Caicedo, and Valle del Guamuéz. In short, 43 municipalities were fumigated in the first year of Plan Colombia.

In 2001, the following municipalities were fumigated in the department of Bolívar: Cantagallo, Santa Rosa del Sur, San Pablo, and Simití; in department of Nariño, the municipalities of Tumaco, Payán, Llorente, and Barbacoas; in the department of Caquetá, the municipalities of Milán Solita, Valparaíso, Solano, Curillo, Paujil, Albania, San José de Fragua, Puerto Rico, and Cartagena del Chairá; in the department of Putumayo, the municipalities of Puerto Leguísimo, Puerto Guzmán, Orito, San Miguel, Valle del Guamuéz, la Dorada, and La Hormiga; in the department of Cauca, the municipalities of Argelia and Balboa; in the department of Norte de Santander, the municipalities of Tibú, Sardinata, and El Tarra; in the department of Meta, the municipalities of Puerto Rico, Puerto Concordia, and Mapiripán; in the department of Vichada, the municipalities of Cumaribo, Guarima, and Puerto Príncipe; and in the department of Guaviare, the municipalities of San José, Retorno, Calamar, and Miraflores. In short, 40 municipalities were aerially sprayed in 2001.

In 2002, the following municipalities were fumigated in the department of Nariño: Tumaco, Barbacoas, Maguá (Payán), Bellavista, Llorente, and Roberto Payán; in the department of Caquetá, the municipalities of San José de Fragua, Cartagena del Chairá, Curillo, Milán, Montañita, San Vicente del Caguán, Solano, Solita, and Valparaíso; in the department of Putumayo, the municipalities of Orito, Puerto Caicedo, Puerto Guzmán, Puerto Asís, San Miguel, Valle del Guamuéz, Villagarzón, and Puerto Leguísimo; in the department of Antioquia, the municipalities of Tarazá and El Bagre; in the department of Córdoba, the municipalities of Montelibano and Puerto Libertador; in the department of Norte de Santander, the municipality of Tibú; in the department of Meta, the municipalities of Puerto Rico, Puerto Concordia, Puerto Lleras, and Mapiripán; and in the

department of Guaviare, the municipalities of San José, Retorno, and Calamar. In 2002, a total of 35 municipalities were aerially sprayed.

In 2003, the following municipalities were fumigated in the department of Cauca: Argelia, El Bordo, Mercaderes, La Vega, and Balboa; in the department of Nariño, the municipalities of Tumaco, San Antonio, Roberto Payán, Maguá (Payán), Barbacoas, El Charco, Francisco Pizarro, and Olaya Herrera; in the department of Putumayo, the municipalities of Orito, Valle del Guamuéz, San Miguel, Villagarzón, Puerto Guzmán, and Puerto Asís; in the department of Meta, the municipalities of Vista Hermosa, Puerto Rico, Puerto Concordia, Mapiripán, Puerto Lleras, and Mesetas; in the department of Caquetá, the municipalities of Cartagena del Chairá, Curillo, San Vicente del Caguán, Solano, and Valparaíso; in the department of Santander, the municipality of Cimitarra; in the department of Norte de Santander, the municipalities of Tibú, Sardinata, El Tarra, and Teorema; in the department of Bolívar, the municipalities of Cantagallo, San Pablo, Simiti, and Santa Rosa del Sur; in the department of Antioquia, Argelia, Anorí, Cáceres, Yondó, Zaragoza, Tarazá, and El Bagre; in the department of Córdoba, the municipalities of Puerto Libertador; and in the department of Guaviare, the municipalities of El Retorno, Miraflores, San José del Guaviare, and Calamar. (Aerial spraying was also initiated in the department of Arauca, including the municipalities of Fortul, Arauquita, and Puerto Rendón.) In 2003, a total of 54 municipalities were aerially sprayed.

In 2004, the municipality of Cumaribo was fumigated in the department of Vichada; in the department of Santander, the municipalities of Sucre, Betulia, and Bolívar; in the department of Nariño, the municipalities of Tumaco, Barbacoas, Maguá, El Rosario, El Charco, Ipiales, and Roberto Payán; in the department of Cauca, the municipalities of San Sebastián, Mercaderes, Balboa, Piamonte, and Santa Rosa; in the department of Arauca, the municipalities of Saravena, Arauquita, and Fortul; in the department of Magdalena, the municipality of Santa María; in the department of Bolívar, the municipalities of Simití, San Pablo, Cantagallo, Santa Rosa del Sur, and Morales; in the department of Vaupés, the municipality of Cururú; in the department of Meta, the municipalities of Puerto Rico, Puerto Concordia, Puerto Gaitán, and Mapiripán; in the department of Caquetá, the municipalities of Florencia, Puerto Rico, Albania, San José de Fragua, Curilo, Milán, San Vicente del Caguán, Solano, Belén de los Andaquíes, Paujil, Cartagena del Chairá, Solita,

Valparaíso, Doncella, and Montañita; in the department of Guajira, the municipality of Dibulla; in the department of Norte de Santander, the municipalities of Tibú, Sardinata, Teorema, El Tarra, and San Calixto; in the department of Caldas, the municipality of Samaná; in the department of Antioquia, the municipalities of Valdivia, Henchí, Segovia, Anorí, Tarazá, El Bagre, Zaragoza, Cáceres, Sonsón, and Puerto Trinfo; in the department of Guaviare, the municipalities of Miraflores, San José, Retorno, and Calamar; and in the department of Putumayo, the municipalities of Orito, Puerto Caicedo, Puerto Guzmán, Puerto Asís, Valle del Guamuéz, Villagarzón, San Miguel, and Mocoa. In 2004, a total of 75 municipalities were aeri ally sprayed.

In 2005, the following municipalities were fumigated in the department of Antioquia: Anorí, San Francisco, San Luis, Segovia, Cáceres, Sonsón, Montecristo, Valdivia, Puerto Nare, El Bagre, Henchí, Cuacacia, Taraza, Ituango, Zaragoza, and Yondo; in the department of Nariño, the municipalities of Tumaco, Maguí (Payan), Roberto Payan, Francisco Pizarro, Olaya Herrera, El Charco, Barbacoas, La Tola, El Rosario, and Leiva; in the department of Cauca, the municipalities of Sotara, Balboa, El Tambo, Bolívar, Patía, Mercaderes, Argelia, and Piamonte; in the department of Boyacá, the municipalities of Muzu, Puerto Boyacá, and Pauna; in the department of Guaviare, the municipalities of Miraflores, San José, Retorno, and Calamar; in the department of Meta, the municipalities of Fuente de Oro, Puerto Rico, Puerto Concordia, Mapiripan, San Carlos Guroa, Puerto Lleras, and Vista Hermosa; in the department of Caquetá, the municipalities of Albania, Curillo, Milan, Montañita, San Vicente del Caguan, Solano, Cartagena del Chaira, Solita, Puerto Rico, Valparaíso, Florencia, and Doncella; in the department of Putumayo, the municipalities of Orito, Puerto Caicedo, Puerto Guzmán, Puerto Asís, Mocoa, San Miguel, Valle del Guamuez, Villagarzón, and Puerto Leguizamón; in the department of Arauca, the municipalities of Fortul, Arauquita, Puerto Rondón, Saravena, and Tame; in the department of Norte de Santander, the municipalities of Tibú, Sardinata, El Tarra, Hacarí, El Zulia, and San Calixto; in the department of Cundinamarca, the municipality of Caparrapi; in the department of Chocó, the municipality of Sipi; in the department of Guajira, the municipalities of La Dibulla and Riohacha; in the department of Valle, the municipality of Bolívar; in the department of Vaupés, the municipality of Carurú; in the department of Magdalena, the municipalities of Ciénaga and Santa Marta; in the department of Córdoba, the municipalities of Ayapel, Montelíbano, Tierralta, and Puerto

Libertador; in the department of Caldas, the municipalities of Samaná, Norcacia, and La Victoria; in the department of Santander, the municipalities of Cimitarra, Sucre, Barrancabermeja, El Peñon, Bolívar, and Landázuri; and in the department of Bolívar, the municipalities of Albornó, El Rosario, Cantagallo, San Pablo, Simití, Santa Rosa del Sur, San Jacinto del Cauca, Río Viejo, Arenal, Barranco de Loba, and San Martín de Loba. In 2005, a total of 110 municipalities were aerially sprayed throughout the country.

In 2005, the aerial spraying program covered vast areas of the country, as recorded by the United Nations Office Against Drugs and Crime in Colombia in its 2006 annual report: [84]

Aspersión aérea y cultivos de coca en Colombia, 2005



Fuentes: para cultivos ilícitos: Gobierno de Colombia - Sistema de monitoreo apoyado por UNODC; para aspersión aérea: DIRAN
 Los límites, nombres y títulos usados en este mapa no constituyen reconocimiento o aceptación por parte de las Naciones Unidas

Likewise, aerial spraying was carried out over several areas around Natural National Parks (understood as outside of national parks, though having conservation objectives, comprising water tables, wetlands, forests, and rivers, among other ecosystems). As a result, an ecocide of tremendous proportions has developed.

The fumigated areas included the Muchinque National Park in the Mechengue River Basin in the township of Playa Rica; the Nevado National Park in the municipalities of Iquira, Veredas Alpe, Santa Rosa, San Francisco, and Tierra Adentro (Huila); the Puracé National Park in the area of Valencia; the Paramillo National Park in the township of San José (Río Sucio sector), the township of Uré (Alto Río Uré sector), Tierradentro, and Serranía San Jerónimo; the La Macarena National Park; Nukak Natural Reserve; La Paya National Park; the Tatamá National Park in the municipality of Santuario; and the Catatumbo-Barí National Park. [85]

In the second half of 2006, within the span of only four days, 1,456 hectares were fumigated in the heart of the La Macarena Natural National Park. [86] In the end, 1,688 hectares were aerially sprayed.

These fumigations affected thousands of persons, as demonstrated by the number of complaints lodged throughout the country since 2001 up to today: [87]

In the department of Antioquia, communities in the following municipalities were affected: Anorí, Cáceres, Caracolí, Caucasia, Cocorna, El Bagre, Henchí, Peque, Puerto Nare (La Magdalena), San Francisco, Segovia, Tarazá, Uramita, Valdivia, Yondó (Casabe), and Zaragoza.

In the department of Arauca, communities in the following municipalities were affected: Arauquita, Fortul, Saravena, and Tame.

In the department of Bolívar, communities in the following municipalities were affected: Cantagallo, Morales, Río Viejo, San Pablo, Santa Rosa del Sur, and Simití.

In the department of Caldas, communities in the following municipalities were affected: Norcasia and Samaná.

In the department of Caquetá, communities in the following municipalities were affected: Albania, Belén de los Andaquíes, Cartagena del Chairá, Curillo, El Doncella, El Paujil, Florencia, La Montañita, Milán, Morelia, Puerto Rico, San José del Fragua, San Vicente del Caguán, Solano, Solita, and Valparaíso.

In the department of Cauca, communities in the following municipalities were affected: Balboa, Bolívar, el Tambo, La Sierra, Mercaderes, Patia (El Bordo), Piamonte, San Sebastián, and Sucre.

In the department of Cesar, communities in the following municipalities were affected: Agustín Codazzi, La Paz, Manaure, San Diego, and Valledupar.

In the department of Córdoba, the community of Puerto Libertador was affected.

In the department of Guaviare, communities in the following municipalities were affected: Calamar, El Retorno, Miraflores, and San José del Guaviare.

In the department of Huila, communities in the following municipalities were affected: Algeciras, Campo Alegre, Colombia, Iquira, and Neiva.

In the department of Guajira, communities in the following municipalities were affected: Dibulla and Brumita.

In the department of Magdalena, a community in the district of Santa Marta was affected.

In the department of Meta, communities in the following municipalities were affected: La Uribe, Mapiripán, Puerto Concordia, Puerto Gaitán, Puerto Lleras, Puerto Rico, San Juan de Arama, and Vistahermosa.

In the department of Nariño, communities in the following municipalities were affected: Barbacoas, Buesaco, El Charco, El Rosario, El Tablón, La Cruz, La Florida, La Unión, Leiva, Magui (Payán), Olaya Herrera, San Juan de Pasto, Policarpa, Roberto Payán, Samaniego, San Pablo, Santa Barbara, Tumaco, and Túquerres.

In the department of Norte de Santander, communities in the following municipalities were affected: El Tarra, Hacarí, Sardinata, and Tibú.

In the department of Putumayo, communities in the following municipalities were affected: Orito, Puerto Asís, Puerto Caicedo, Puerto Guzmán, San Miguel, Valle del Guamuez (La Hormiga), and Villagarzón.

In the department of Santander, communities in the following municipalities were affected: Barrancabermeja, Betulia, Bolívar, Cimitarra, El Peñón, Landazuri, Puerto Wilches, and Sucre.

In the department of Tolima, communities in the following municipalities were affected: Anzoátegui, Chaparral, Ibagué, Planadas, Rioblanco, San Antonio, and Santa Isabel.

In the department of Valle, the community in the municipality of Bolívar was affected.

In the department of Vichada, the community in the municipality of Cumaribo was affected.

More than one hundred municipalities from 20 of the 32 departments in Colombia were fumigated, which affected said communities. Nonetheless, this figure does not represent the reality of the situation since not all persons exposed to the fumigations have been able to present their complaints. In fact, due to the inefficiency of the administrative complaint process, many persons were discouraged in going through this process.

According to official figures, [88] of the 6,429 complaints that were processed by anti-narcotics authorities only 33 of the claimants were compensated for the harm caused. In

other words, only 0.5% of the claimants, which discouraged many of the affected persons from going through this procedure. [89]

These complaints are processed in relation to the affectation of licit crops; however the range of affectations is even greater. The Office of the Human Rights Ombudsman has stated the following: *“[I]n the fight against said substances, emphasis has been placed on the criminal policy to the detriment of the protection of other constitutionally protected rights, including: (a) the principle of positive differentiation through which the State must provide special protection to the most vulnerable population (minors, internally displaced persons, members of ethnic groups, and the rural population); (b) the rights to health, food, food security, public health, and, therefore, life and a dignified life; (c) the right to not be displaced and, in the case of forced migrations, to be assisted by the State; and (d) the protection and conservation of the natural environment, natural resources, and areas protected for ethnic, ecological and cultural reasons, as a part of the principle of sustainable development and the recognition of Colombian multiculturality.”* [90]

5.2.1 VIOLATION TO THE RIGHT TO FOOD AND WORK

According to studies by Colombian specialists, *“[g]lyphosate, as a widely used herbicide, has toxic effects on most of the plant species and may be a risk for species in danger of extinction if applied in areas of their habitat. According to information by the EPA, as reported by PAN Asia-Pacific, more than 74 threatened species in the United States may be in danger due to the use of glyphosate. Additionally, according to the same source, sub-lethal doses of glyphosate may increase the susceptibility of certain plants (e.g. apple, barley, soy, and tomato) to diseases caused by fungus.*

Glyphosate may inhibit beneficial fungus aiding plants to absorb nutrients and water. In a study, [glyphosate] inhibited the formation of nitrogen-fixing nodules in clovers for 120 days after the treatment. In sub-lethal doses, it may interfere with certain metabolic processes in plants. For instance, the potassium and sodium absorption may be inhibited in legumes and lignum production may be reduced in asparagus and flax.” [91]

Most of the affected people reported fumigations gravely affected their subsistence crops, at first withering the crops and later lowering the productivity of the crops.

“[W]hen the planes passed overhead, I thought we hadn’t been fumigated since they sprayed the poison over the area downriver. However, we, me and my

family, noticed a bad stench. The next day, I went to see the crops and the first thing I saw was the withered corn, along side the sugarcane, plantain, and yucca. Everything is [planted] close to each other. Only after three days, the leaves began to fall from the plants and dry up. For instance, although it didn't seem anything had happened to the plantain at first, the leaves began to dry, the stalks turned yellow, and the plantain sprouted poorly. Even though so many days had gone by, the poison kept harming the crops.” [92]

This situation gravely affects the right to food and consequently the right to work, since most of the persons affected are *campesinos* living off of their subsistence agricultural production.

5.2.2 VIOLATION TO THE RIGHT TO HEALTH AND LIFE

“A proper analysis of the current scientific and informative bibliography allows identifying the risks to the environment and health, inasmuch of the Roundup components as of the synergic effect of the mixture used in the aerial spraying.

When glyphosate falls to the earth, the main degrading metabolite is aminomethylphosphonic acid (AMPA), which is also toxic. Glyphosate may contain trace amounts of N-nitroso glyphosate or this compound may form in the environment when it combines with nitrate (present in human saliva or fertilizers). Most of the N-nitroso compounds are carcinogenic. Formaldehyde, another known carcinogen, is also a decomposition product of glyphosate. Glyphosate turns into AMPA, then into Methylamine, and finally into Formaldehyde. (Cox, 1995; Dinham, 1999; Williams et. al., 2000.)

The POEA surfactant contained in the formula harms the intestines and central nervous system, causes respiratory problems, and destroys red blood cells in humans. POEA is contaminated with dioxane-1,4, which has caused cancer in animals and has harmed livers and kidneys in humans.

Insofar as Cosmoflux, nothing is known, except that in Colombia mixing it in Roundup raised this product from toxicological category IV to category III (moderately toxic), but without undertaking any kind of study proving this

categorization. It is known to diminish the drop sizes of glyphosate and increase its adherence to the surface it falls on, which allows more absorption through digestion, respiration, skin, and plant cuticles, and increasing the drift by allowing more time to suspend in the air [...].

Roundup is also associated with greater risk for miscarriages and premature births. In a study from 1984 to 1990, glyphosate registered as the most common pesticide causing illness among gardeners. In another study, it occupied third place among the most commonly registered causes for illness among agricultural workers in California.

Brian Tokar asserts some of the symptoms of acute poisoning as a consequence of humans ingesting Roundup, include intestinal cramps, vomit, swelling - tumefaction- of lungs, pneumonia, disorientation, and the destruction of red blood cells. There are reports concerning irritation of the eyes and skin for the workers mixing, transporting, and applying glyphosate.” [93]

The Communities exposed to fumigations have also claimed to suffer from strong acute impact in their health, relating to skin, digestive and respiratory diseases (in most cases). Even more grave, reports have been made of deaths due to exposure to fumigations.

The most well-known cases in Colombia concern the death of twenty-one indigenous children in the area of Alto Naya in the Municipality of Buenos Aires (department of Cauca) in 1994; the death of three Nukak-Makú indigenous persons in the department of Guaviare in 1998; grave respiratory and skin affectation in children from the community of Aponte and Tablón de Gómez in the department of Nariño in 2001; diverse affectations suffered by the communities from San Miguel, Orito, and Vallé del Guamuez in Putumayo in 2001; the death of a *campesino* in San Pablo (department of Bolívar) in 2003; and the death of Evelio Chirimía, Yeison Chiripúa, and María Sandra Mesa, indigenous children of the Eperara Siapidaara people, due to the fumigations carried out in the communities of San José de Robles, Tórtola, and Casa Grande along the banks of the Satinga, Sanquianga, Tapaje, Sequihonda La Tola, and Iscuandé Rivers in 2005.

In most of the previously described cases, the US Embassy intervened to support studies (concerning the connection between the fumigations and the deaths and affectations), which attributed the deaths to unhealthy living conditions or sudden epidemics.

5.2.3 VIOLATION TO THE RIGHT TO A HEALTHY ENVIRONMENT

“In general, due to alterations to food and habitat, attacks with herbicides not only have serious impact on the autotrophic components of an ecosystem (the first link of a food chain), but on the heterotrophic components as well. As a result, after the destruction of plants, there is also an inevitable reduction in the population of herbivores, mammals, birds, pollinating insects, among other animals, which will also affect the carnivores and predators in the chain. In addition to a weakening effect on the wildlife due to the destruction of food and places of shelter, herbicides may also be directly toxic to the exposed animals.”
[94]

When contaminated from the use of the chemicals in aerial spraying, these ecosystems are put in a grave situation of vulnerability. This constitutes an ecocide of incalculable proportions, which exacerbates the populations inhabiting the sprayed areas. In this regard, in the end, damage to the environment comprises a violation to a fundamental right.

“The right to the environment may not be separated from the right to life and health of persons. In fact, the disruptive factors for the environment cause irreparable damage to human beings and, if this is so, it must be said that the environment is a fundamental right for the existence of humanity. This conclusion was reached after this Court evaluated the impact of the environment on the life of men, and thus, in the prior rulings of petitions, it has been asserted the right to the environment is a fundamental right.” [95]

5.2.4 TESTIMONIES BY GROUPS OF COMMUNITIES AFFECTED BY THE FUMIGATIONS CARRIED OUT IN COLOMBIA

5.2.4.1 Testimonies by Colombian Communities

Annexed to the present document, these testimonies are from the pre-hearing on fumigations carried out in Medellín on February 22, 2007.

5.2.4.2 Testimonies by Ecuadorean Organizations

Annexed to the present document, these testimonies are from the pre-hearing on fumigations carried out in Medellín on February 22, 2007.

6. GROUNDS FOR THE ACCUSATION

6.1 The enterprise DynCorp has incurred in different types of conduct classified as crimes in **Colombian Criminal Code**:

- 6.1.1 Homicide of protected person (Article 135 of the Colombian Constitution) of some of persons exposed to the spraying, especially children from indigenous communities. This crime has been aggravated due to the promise of remuneration, profit motives, and taking advantage of the victims' defenselessness.
- 6.1.2 Injury to protected persons (Article 136 of the Colombian Constitution), affecting the health of thousands of persons exposed to fumigation.
- 6.1.3 Use of illicit means and methods of wars (Article 142), since prohibited means and methods of war, leading to unnecessary suffering and loss or superfluous harm, have been used in the development of the armed conflict.
- 6.1.4 Acts of terrorism (Article 144), since excessive attacks against the civilian population have been carried out in the development of the armed conflict.
- 6.1.5 Destruction of the natural environment (Article 164), since methods conceived to cause extensive, long-lasting and grave damage to the natural environment have been employed in the development of the armed conflict.
- 6.1.6 Forced displacement (Article 180), since the population deprived of food and subjected to fumigations has had to abandon their territories.
- 6.1.7 Violation to the freedom of work (Article 198), since the free exercise of the rights to work was been disrupted or impeded through violence.

- 6.1.8 Damage to natural resources (Article 331), since natural resources have been harmed, which goes against current national environmental legislation and international environmental principles.
- 6.1.9 Environmental contamination (Article 332), since air, soil, and water has been contaminated, putting at risk human health as well as fauna, forest, flower and hydrobiological resources.
- 6.1.10 Conspiracy to commit a crime (Article 340) through its mercenary activity, aggravated by the fact its motivation lies in provoking forced displacement, drug trafficking, and providing arms to paramilitary groups.
- 6.1.11 Terrorism (Article 343), since the population exposed to this mercenary and anti-narcotics activity has been kept in a state of fear and terror for many years.
- 6.1.12 Contamination of water (Article 371), since water has been contaminated that is meant for human consumption in the populations exposed to the fumigations.
- 6.1.13 Undermines national integrity (Article 455), since this activity has subjected Colombia to partial foreign domination when the interests of other countries has been facilitated.

6.2 DynCorp benefits from the violation of fundamental rights of the Colombian population, caused by the perverse policy of the fight against drugs in Colombia.

- 6.2.1 Right to life (Article 11).
- 6.2.2 Right to not be subjected to cruel treatment (Article 12).
- 6.2.3 Right to Peace (Article 22).
- 6.2.4 Fundamental rights of children to life, physical integrity, health, balanced diet, and recreation (Article 44).
- 6.2.5 Right to health and environmental protection (Article 49).
- 6.2.6 Right to work (Article 53).
- 6.2.7 Right to a healthy natural environment (Article 79).
- 6.2.8 Prohibition of the use of chemical weapons (Article 81).

6.3 DynCorp has committed grave breaches to **International Humanitarian Law**.

- 6.3.1 Breach to the principle of distinction between combatants and non-combatants.
(By attempting to attack the finances of the Colombian guerrilla, this enterprise has directly attacked the civilian population.)
 - 6.3.2 Principle of proportionality, since this enterprise has exceeded indispensable methods in the pursuit of subjecting the enemy, even affecting the civilian population with dangerous chemical elements.
 - 6.3.3 Principle of limitation in the means of combat, as a corollary to the previous principle.
- 6.4** The enterprise DynCorp executes a deliberate of violation of **human rights**, formulated and controlled by the US government and approved by the Colombian government.
- 6.4.1 Right to life (Article 4 of the American Convention).
 - 6.4.2 Right to personal integrity (Article 5 of the American Convention).
 - 6.4.3 Rights of children (Article 5 of the American Convention).
 - 6.4.4 Right to private property (Article 5 of the American Convention).

Endnotes:

- 1 Montecinos, Jorge. *Ejércitos Privados: ¿Globalización del Mercenario?* Center for Strategic Studies, Universidad Arcis, Year 4, No. 8, 2nd Semester, 2004.
- 2 Available at the following web link: <http://en.wikipedia.org/wiki/DynCorp_International>.
- 3 Dinucci, Manlio and Manisco, John A. *El Ejército Secreto de Mercenarios Privados*. December 25, 2006, <<http://www.radiolaprimerisima.com/articulos/954>>.
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